IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Smt. Amita Sharma Vs. Nanag Ram
(D.B. Civil Misc. Appeal No.1299/2003)

D. B. Civil Misc. Appeal under Sec.19 of the Family Courts Act,1984 against the order dated 10-4-2003 in Case No.115/2000 passed by Sh. Gulab Chand Sharma, RHJS, Judge Family Court No.1, Jaipur.

Date of Judgment: April 16, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Rajendra Prasad, for the appellant.

Mr. B.L.Agarwal] for the respondent.
Mr. Amit Kumar]

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Challenge in this appeal is to the judgment dated April 10, 2003 of the learned Judge Family Court No.1, Jaipur whereby suit for declaration and permanent injunction instituted by Smt. Chhota Devi (now deceased) was ordered to be abated.

2. Before proceeding further it will be useful to notice the scheme of the Family Courts Act,1984 (for short `1984 Act') that was enacted with a view to provide for establishment of Family Courts to promote conciliation in, and secure speedy settlement of disputes relating to marriage and family affairs and for matters connected therewith. The Bill inter alia placed before Parliament sought to:-

(a) provide for establishment of Family Courts by the State

Governments;

(b) make it obligatory on the State Governments to set up a Family Court in every city or town with a population exceeding one million;

(c) enable the State Governments to set up, such courts, in areas other than those specified in (b) above;

(d) exclusively provide within the jurisdiction of the Family Courts the matters relating to-

(i) matrimonial relief, including nullity of marriage, judicial separation, divorce, restitution of conjugal rights, or declaration as to the validity of marriage or as to the matrimonial status of any person;

(ii) the property of the spouses or of either of them;

(iii) declaration as to the legitimacy of any person;

(iv) guardianship of a person or the custody of any minor;

(v) maintenance, including proceedings under Chapter IX of the Code of Criminal Procedure;

(e) make it obligatory on the part of the Family Court to endeavour, in the first instance to effect a reconciliation or a settlement between the parties to a family dispute. During this stage, the proceedings will be informal and rigid rules of procedure shall not apply;

(f) provide for the association of social welfare agencies, consellors, etc., during conciliation stage and also to secure the service of medical and welfare experts;

(g) provide that the parties to a dispute before a Family Court shall not be entitled, as of right, to be represented by legal practitioner. However, the court may, in the interest of justice, seek assistance of a legal expert as amicus curiae;

(h) simplify the rules of evidence and procedure so as to enable a Family Court to deal effectively with a dispute;
(i) provide for only one right of appeal which shall lie to the High Court.

3. In the Family Court the parties have to appear in person and they are not versed with the technicalities of law. The learned Judge of the Family Court is expected to simplify the rules of procedure in order to deal effectively with the dispute.

4. In the instant case the learned Judge of the Family Court appears to have indulged in technicalities and without providing legal assistance to the parties under the proviso to Section 13 of 1984 Act observed that since the proceedings were not initiated for bringing the legal representatives of deceased Chhota Devi on record, the suit stood abated. This observation in view of the scheme of 1984 Act is ex-facie unjust. In our opinion, the matter requires reconsideration.

5. As a result of above discussion, we allow the appeal and set aside the impugned order dated April 10, 2003. We remit the matter to learned Family Court No.1 Jaipur for deciding the matter afresh after providing legal assistance to the parties under proviso to Section 13 of 1984 Act. The parties are directed to appear before the Family Court No.1 Jaipur on May 14, 2007 for seeking further instructions. Record of the case be sent back forthwith.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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